

REMARKS

Entry of this amendment with reconsideration and allowance is requested.

Claims 4, 6, 7 and 8 have been canceled. This moots the Examiner's Section 102(e) rejection based on Dubief et al. (U.S. 6,190,676).

The Examiner is requested to reconsider the Section 103(a) rejection of claims 9 and 10-11 as unpatentable over Dubief. With respect, the applicants submit that the method defined by claims 9, 10 and 11 is not obvious from Dubief.

The applicants' method, as defined by claims 9-11, is directed towards improving the coloring effects of a non-oxidative hair dye by applying to the hair, before, during or after application of the non-oxidative hair dye, an amount of ceramide or pseudoceramide effective to provide the improved color effect. This method differs from any method disclosed or suggested by Dubief in several respects. For one thing, Dubief is not concerned with improving the hair coloring effect obtainable with a non-oxidative hair dye. In fact, Dubief makes no reference at all to non-oxidative dyes. The reference simply lists, in Column 8, lines 23-32, a range of hair care compositions, with hair dyeing compositions being mentioned in line 31. There is no particular emphasis on hair dyeing compositions and no reference at all to non-oxidative hair dyeing compositions. The Example given in the patent is concerned with shampoos and conditioner lotions, not dyes, and certainly not non-oxidative dyes.

Dubief uses ceramides to fix UV screening agents to hair. This is completely different from the applicants' concern wherein the present invention as defined by claims 9-11 is based on the unexpected finding that ceramides have benefits in improving the coloring effects of non-oxidative hair coloring compositions. Thus, in short, Dubief does not use his ceramides with non-oxidative dyes, as the applicants' claims require, and he is concerned with a problem (fixing UV screening agents which is substantively different from the applicants' concern (improving the coloring effects of non-oxidation dyes). There is clearly no suggestion in Dubief of the applicants' invention or its advantages. Furthermore, there is no motivation in Dubief to reach the applicants' invention since Dubief's interests are not in any way related to the applicants' objectives and the applicants' results (improved coloring effects using non-oxidative dyes) are not evident from Dubief or in any way inherent therein.

In rejecting claims 9-11 on Dubief, the Examiner indicates that the applicants' invention differs from Dubief only in the amount of ceramide compounds that are used (last ¶, page 2 of the action). However, with respect, it is submitted that there are the other substantive differences noted above, i.e. the applicants use the

ceramides for a different purpose in conjunction with non-oxidative hair dyes. As noted, Dubief does not disclose the use of non-oxidative hair dyes even for his different purpose and he provides no suggestion, expressed, implied or inherent, that ceramides could be used to provide an improved coloring effect when used with non-oxidative hair dyes.

The Examiner's comments in the last two paragraphs, page 3 of the action under the heading "Response to Applicant's Arguments" are not believed applicable to the present claims, claims 4 and 6-8 having been canceled. Claims 9-11 specifically bring out the requirement that the ceramide is applied to the hair either before, during or after application of the non-oxidative hair dye. The requirement for a non-oxidative hair dye to be used in conjunction with the ceramide for the applicants' purpose of improving the color effect of the hair dye is brought out in claims 9-11 and, as noted, is not obvious from Dubief.

Finally, it is noted that the case law cited by the Examiner at page 4 of the action is not relevant to claims 9-11 which claim a method (not a composition as in the cited *In re Schoenwald*) and differ from the art manipulatively in using a combination (non-oxidative hair dye and ceramide) for a substantively different purpose.

In summary, it is respectfully submitted that applicants' claims 9-11 define subject matter which is new and unobvious from Dubief. Accordingly, favorable reconsideration of this application with allowance is requested.

Respectfully submitted,

MORGAN LEWIS & BOCKIUS LLP

By 

Paul N. Kokulis
Reg. No. 16773

Date: June 12, 2007

Customer No. 09629
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-3000
Facsimile: (202) 739-3001
Direct: (202) 739-5455